

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 410 OF 1992

Karbharai D. Bharkale & Anr. ..Appellants
versus

Smt. Shantabai R. Gode & ors. ..Respondents

Mr. R.S. Ghadge for the Appellants.

Mr. Rajesh Patil i/b. Ms. S. D. Khot for
the Respondents No. 1 to 3.

Nobody is present for Respondent No.4 i.e. The New India Assurance Co. Ltd. Nasik

CORAM : D. G. DESHPANDE, J.

DATE : 31ST MARCH, 2005

ORAL ORDER :

1. Heard learned counsel for the appellants and Respondent Nos. 1 to 3. Nobody is present for Respondent No.4. i.e. Insurance Company.

2. Appellants are the owner and driver of the vehicle, which was involved in the accident. MACT, Nasik awarded Rs.1,01,000/- as compensation with interest at the rate of 12% per annum on the amount of Rs.86,000/-. That order is challenged by the

appellants, by this appeal.

3. Two grounds were raised by the counsel for the appellants, firstly, according to him the Insurance Company is wrongly exonerated, and secondly, quantum of compensation is not properly arrived at and it is based on wrong calculations and assumptions.

4. So far as first aspect is concerned, deceased was travelling in a trolley and therefore rightly the insurance company was exonerated.

5. However, so far as quantum of compensation is concerned, according to the wife of the deceased age of the deceased was between 40 to 45 years. Tribunal took 40 years as basis. Then according to the wife his income was Rs.15/- per day i.e. monthly income was Rs.450/- and multiplier of 15 was applied. Counsel for the appellants contended that taking the age of the deceased as 40 years, is wrong and not giving any deductions for the personal expenditure from the monthly earning for the deceased is also wrong and therefore the figure arrived at by the Tribunal is wrong.

6. I find considerable force in the submissions. It is true that wife of the deceased

could not give the exact age of the deceased. According to her the age was between 40 to 45 years, so mean could be found and 42 years could be taken as a proper age, multiplier of 15 is proper holding that income of the deceased was Rs.450/- per month was also proper. However, 1/3rd of that amount was required to be deducted for the personal expenditure. Therefore, consequently compensation would come at $\text{Rs.}300 \times 12 \times 15 = \text{Rs.}54,000$. Tribunal has awarded Rs.20,000/- for the loss of love, affection and care and protection that has to be uphold, in addition Rs.5,000/- for funeral expenses are required to be awarded. Therefore total compensation comes to $\text{Rs.}54,000/- + \text{Rs.}20,000/- + \text{Rs.}5,000/- = \text{Rs.}79,000/-$.

7. Learned counsel for the appellants contended that the Tribunal awarded interest at the rate of 12% per annum which is on higher side. He also submitted that the appellants have deposited the amount when the appeal was filed. If that is so then there is no question of further interest being payable by the appellants. Therefore interest part of the order of the Tribunal does not require any change. Hence, I pass the following order:

ORDER

. Amount of compensation awarded at Rs.1,01,000/- is reduced to Rs.79,000/- in all. Rest of the part of the order to remain the same. No order as to costs of this appeal.

. Respondents - claimants will be entitled to withdraw amount of Rs.79,000/- plus interest from the date of the Award till deposit in court and investment along with interest accrued on that amount, and the balance will be returned back to the Appellants.

. Appeal disposed of accordingly.

31.3.2005

(D.G. DESHPANDE, J.)